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Case No: UY13C000102

**NEWCASTLE UPON TYNE COUNTY COURT**

The Law Courts  
Quayside  
Newcastle upon Tyne  
NE1 3LA

**12<sup>th</sup> February 2014**

**B E F O R E:**

**HER HONOUR JUDGE HUDSON**

**North Tyneside Council**

**Applicant**

**-v-**

**M & B**

**Respondents**

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**Judgment**

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1. **Her Honour Judge Hudson :** These proceedings concern two very young boys; they are twin brothers, A and B. They were born on the 2<sup>nd</sup> October 2013 so they are now just 4 months of age.
2. Their parents are M (aged 30, born on the 22<sup>nd</sup> February 1983) and F (born on 29<sup>th</sup> October 1970 and therefore 43 years old). He has parental responsibility for the children as he is named as their father on their respective birth certificates.
3. The application was made on 3<sup>rd</sup> October 2013, the day after the children's birth, in circumstances in which the local authority had significant concerns about the parents' ability to provide for the children. They have been subject to interim care orders since the 7<sup>th</sup> October 2013 and have been placed in local authority care. The proceedings were case managed by Her Honour Judge Moir with directions given on three separate occasions (18<sup>th</sup> October, 11<sup>th</sup> November and the 18<sup>th</sup> November 2013) before the case came before me on the first occasion last week, the 3<sup>rd</sup> February 2014, when the case was listed for an issues resolution hearing.
4. In circumstances which I will set out in brief shortly, the case was unable to proceed to an effective issues resolution hearing. I adjourned the case for a period of a week to a hearing today, 12<sup>th</sup> February 2014, when I listed the case for an adjourned issues resolution hearing but I made it clear I intended to use the hearing as a final hearing unless there were good reasons to do otherwise.
5. The proceedings have an unhappy background in relation to each of the boys' parents, who both have a long history of substance misuse. They have associated offending histories. Their relationship is one which has been said to involve domestic abuse. As a result on 22<sup>nd</sup> August 2013, and therefore before the boys were born, the local authority convened a child protection conference.
6. The local authority had, by that stage, undertaken a pre-birth parenting assessment. The assessment is documented in a detailed report which was completed on 31<sup>st</sup> July 2013. The local authority considered there to be significant risks to the unborn children as a result of the parents' circumstances. The unborn babies were each made the subject of child protection plans under the category of neglect. Following their birth, the children were immediately made the subject of these proceedings.
7. Very sadly, following their birth both children needed treatment for drug withdrawal. They were discharged to foster care on 8<sup>th</sup> October 2013 when they were six days old and that is where they have remained. The case management directions made by Her Honour Judge Moir included an updated parenting assessment in respect of M, who wished to be considered as a carer for the boys.
8. In the event, over the subsequent months, each of the parents spent periods in custody. F was most recently released from custody at the end of October 2013. M spent a further period on remand in November 2013, I understand in relation to an offence of affray which took place at The Probation Service, and was then released from custody at the end of November 2013.
9. The relationship between the parents has been characterised by separation and reconciliation. The local authority was informed that they had reconciled at the end of

December 2013. Within a short space of time, however, there were accounts of domestic abuse between them.

10. The local authority arranged contact for each of the parents with the twins. Although her attendance has been better, M's attendance at contact has been inconsistent. When she has attended the contact (which has been available for her twice per week) the contact has been generally good. So far as F is concerned, his statement filed today recognises that he has taken up very little of the contact that has been made available for him. He has attended only about three of the visits. I do not question his love for his children or his wish to see them, but he has found his own life circumstances very difficult and has not been in a position to commit to regular contact.
11. By the start of this year, the local authority was aware that each of the parents had no fixed address. They were understood to be living between other addresses and on the streets, once again involved in both alcohol and drug misuse. The parents have both had previous involvement with Plummer Court in relation to their drug abuse. The report from the Plummer Court in January 2014 indicated that they were no longer engaging.
12. The local authority had failed to complete the proposed updated parenting assessment in circumstances in which M had not engaged with the local authority and had not made herself available for assessment. There were no alternative family carers. As a result of this, the local authority considered the plan for the boys at a Looked After Review on 14<sup>th</sup> January 2014 and formulated a plan for adoption. That recommendation was endorsed by agency decision-maker. The local authority has filed a final care plan in respect of each of the children setting out its plan for placement for adoption with indirect contact with the birth family. The local authority also issued placement applications, to allow the court to determine applications in the event final care orders are made.
13. The parents were each directed to file final evidence by 24<sup>th</sup> January 2014 with a guardian's report to be filed by 31<sup>st</sup> January 2014. The case was then listed, initially before Her Honour Judge Moir for an issues resolution hearing but, due to her absence on leave at the time the case was listed, the case came before me.
14. The children's guardian, Nicola Murphy, had completed her final analysis by that stage. She had done so without receiving any statements from the parents but, quite properly, filed a final analysis as directed on 31<sup>st</sup> January 2014. On the basis of the information then available to her, she reached her conclusion that the local authority's plan for the boys was the appropriate way forward. She indicated her support for that plan, having undertaken a proper analysis of the options for the placement of the children.
15. The case then came before me on 3<sup>rd</sup> February 2014. Neither parent attended the hearing and, for reasons which appear to be due to administrative confusion, M was not actually represented. I was told that the parents had disengaged from the professionals. It was understood that M was then once again in custody at Low Newton in Northumberland.

16. Following the hearing contact was swiftly made with Mr Smith who represented M. He has confirmed at this hearing that he had been unable to prepare a statement because M had not engaged with him. He was, however, able to see her while she was in custody at Low Newton and did so on the Friday of last week, the 7<sup>th</sup> February 2014. I also invited the local authority and the children's guardian to do what they could to assist Mrs Sowerby (representing F) to engage him in the proceedings before the adjourned issues resolution hearing, clearly aware (as they were) that I intended to use this hearing as a final hearing.
17. The position has moved on since then. Mr Smith duly visited M in Low Newton on Friday of last week. She told him that she did not agree to the local authority's plan for the children but said that she did not want to attend court today. She asked Mr Smith to seek an adjournment of the hearing to a final hearing at a later stage.
18. In the case of F, his solicitors were able to make contact with him. I am very pleased that he has engaged with them so they have been able to prepare a short statement which has been provided to me today. He has attended today's hearing, despite the delays which I will record shortly. He has remained throughout the hearing.
19. F confirmed, through his solicitors and in his statement, that the circumstances in which he presently finds himself are not such that he could offer a home to his children (much as he would wish to). He also recognises, and it is very much to his credit that he does so, that the boys cannot wait for him to get his life in order so that he could provide for them.
20. In the usual course, at an early stage in the case management of the proceedings the parties were asked to put forward any extended family members (or other carers) that they asked to be assessed. There were two options proposed from the paternal family. One was subject to negative assessment; the second did not proceed to a complete full assessment because of a change of circumstances of those being assessed.
21. On Thursday of last week the local authority was notified by those representing the father that he wished to have a further family placement considered. That was with a paternal great-aunt and uncle, Mr and Mrs D. I am very grateful to the local authority social worker for undertaking a very prompt initial assessment of Mr and Mrs D, which was emailed to me yesterday and also given to Mr and Mrs D. The initial assessment report sets out the areas of discussion with the Ds and highlights positives and negatives in relation to their wish to provide a home for the boys, but ultimately reached a negative conclusion.
22. Mr and Mrs D were informed of the conclusion of the assessment yesterday. They were clearly aware of the timescale of the proceedings and today's hearing. They were told that they would need to attend court today if they wished any further steps to be taken on their behalf in the proceedings. They have not attended court. Once again, I am grateful to the social worker for the efforts that she has made this morning to speak with Mrs D to confirm that she and her husband were aware of the time and location of today's hearing. Mrs D confirmed that they were disappointed with the outcome of the assessment, but they understood why the local authority had reached its negative conclusion. In those circumstances there are no other placements within the family to consider.

23. I return to M's case. Following the email from Mr Smith indicating that she did not wish to attend, I replied informing him that, if M was seeking to oppose the local authority's plan, she was required to attend this hearing. I made a production order to facilitate her production from Low Newton and she was duly produced. She was present for the early part of the hearing today, having given Mr Smith further instructions.
24. Mr Smith has not been in a position to file a statement from M. He told me that, when he visited her in Low Newton last Friday, she was very distressed and was not in a position to give him instructions. I therefore indicated that I was minded to proceed with the case today and was willing to give him such time as he needed today to clarify the instructions that he had by then outlined to me.
25. M's case was put as follows. She is presently in Low Newton, having been arrested for a shoplifting offence which is due before the magistrates' court later this month. I am told that M intends to plead not guilty. Even if convicted, I am quite prepared to accept from Mr Smith that the nature of the offence - theft of goods worth about £70 - is unlikely to result in any form of custodial penalty. M is, however, currently subject to a two month suspended sentence order. It is likely that that will be activated, but the time she has already spent on remand will have provided for that sentence to have been served. It is therefore anticipated that LM will be released from custody by the end of this month.
26. Mr Smith told me on M's instructions - and I was quite prepared to accept from him - that on her release M is likely to be provided with accommodation. I was told that it might be Durham area, which would provide M with the most settled position that she has had for some time: with accommodation out of the immediate locality and in an environment in which it is said that she can start to rebuild her life for herself and her children. She would ask that the children therefore remain in foster care until she is in a position to care for the children.
27. Mr Smith's application at the outset today was for the proceedings to be adjourned for a period of weeks so that M would be released and then in a better position to make her application for the final determination in respect of the boys to be postponed. I made it clear to him that I did not see any benefit from such a course, in circumstances in which he was well able to put those arguments and I was quite prepared to take them at their very highest in terms of M's release and being rehoused as proposed.
28. In circumstances in which Mr Smith had not been able to file a statement from M, I made it clear to him that I would give him further time today to take instructions from M before she gave evidence in support of her case (if she wished to do so). I also made it clear that I would allow such time that was reasonably required for Mr Smith to clarify his instructions for cross-examination of the social worker and the children's guardian. It was evident during that part of the hearing earlier today that M became quite agitated - I could hear her saying that she was not prepared to stay at court all day. I therefore rose to allow Mr Smith an opportunity to speak to her privately.

29. I duly received a message from Mr Smith informing me that he had clear instructions that M did not wish to come back into court, she did not intend to participate in the hearing any further and wanted to be able to go back to Low Newton. I made it clear that the decision was entirely a matter for M, having received advice which I have no doubt Mr Smith gave her in very clear terms, but that the hearing would proceed if she chose to absent herself.
30. When the hearing resumed. Mr Smith told me that he had written instructions from M that she did not intend to participate in the hearing further. She instructed him that she did not want to stay at court, she did not wish to oppose the application and wanted to return to Low Newton. I clarified with Mr Smith whether he had any instructions to cross-examine either the social worker or the children's guardian, but he was clear that the basis upon which he had been instructed by M left him in a position in which he was not able to make any further representations. The local authority applications are, therefore, unopposed but there is no consent to either of the applications, either from M or indeed from F.
31. I turn to my analysis in relation to the threshold and welfare. There is no issue, I am pleased to say, in relation to the threshold criteria. The local authority filed its schedule of findings dated 3<sup>rd</sup> October 2013 at the outset of the proceedings (at A1-2 of the bundle). It sets out in eight paragraphs (four relating to M and four relating to F) a short summary of the areas in which the local authority say their circumstances and lifestyle led to the threshold criteria being established at the time that protective measures were put in place for A and B.
32. Threshold concessions were made by M at an earlier case management hearing. Ms Sowerby has confirmed the concessions F makes (in accordance with the findings sought as they relate to him). I am quite satisfied that those findings, which will in due course be attached to the order that I make, are a proper and proportionate determination of the threshold in this case. The threshold is clearly established and leads to the welfare determination in the case of A and B.
33. It is clear from the history that I have given so far that there are no family members, either the children's parents or within the wider family, who now are in a position to put themselves forward as carers for the children at this stage. Any consideration of M was to be as a future carer at some future date, once she had established herself in new accommodation and was established to be free of drugs. Bearing in mind the very long history of drug misuse and addiction, M is yet to satisfy the court that she could be considered as a safe and appropriate carer for her very young children.
34. The welfare of the children is my paramount consideration. In accordance with the judgment of Lord Justice McFarlane in *Re G* [2013] EWCA Civ 965, where the local authority's plan includes the option of placement for adoption, the analysis must be undertaken in accordance with the section 1 welfare test in the Adoption and Children Act 2002. The court must consider the welfare of the children throughout their lives. I must have regard to the extended welfare checklist in section 1(4) of the 2002 Act, which requires the court to consider, amongst other factors, the impact upon the children ceasing to be a member of the birth family upon adoption and the impact of those orders upon the children. The court must also consider the arrangements for contact which are proposed for the children.

35. I have taken account of the judgment of the Supreme Court in *Re B* [2013] UKSC 33, which emphasised that a care plan of adoption is a last resort. Such a care plan can only be approved where nothing else will do. I have also taken account of the judgment of the Court of Appeal in *Re B-S* [2013] EWCA Civ 1146, in which the President stressed the approach the court must take when undertaking the welfare analysis - a thorough holistic evaluation of the placement options for a child particularly before any plan for adoption can be approved. Article 8 rights are fully engaged, so that any interference with those rights and the separation of the children through adoption can only be justified where it is necessary and the only proportionate step which can be undertaken.
36. These boys are still very young and vulnerable. They each have particular health considerations which need to be taken into account and which have a potential impact on their future care. So far as A is concerned, there are concerns about his development and there is ongoing consideration as to whether he may have cerebral palsy. So far as B is concerned, there are fewer concerns, but he is undergoing investigation to determine whether he has a hearing impairment. They are very young children who are entirely dependent on others for their care needs. They clearly have family who would wish to provide for them. The local authority's plan for the children will provide for their placement away from their birth family and so will deprive A and B of the opportunity of growing up as part of their birth family.
37. The arguments in this case are compelling. They are set out clearly in the social work reports and the final statement of the social worker, Rachael Speirs, together with the analysis (to which I have already made reference) of the children's guardian in her report of dated 31<sup>st</sup> January 2014.
38. The boys simply cannot wait for either of their parents to be in a position to provide for them. It is, as I said, to F's credit that he recognises that. So far as M is concerned, I have given every consideration to the best case that she could put before the court in terms of the care that she could offer for A and B. The period that would be required before she could satisfy the local authority, the guardian and, most importantly, the court that she could be reliably drug free and have a stable lifestyle to care for the children far exceeds any timescale that could be compatible with their needs.
39. In these circumstances, there is a pressing need for their future to be determined without any delay. Taking full account of the section 1 welfare considerations in accordance with the 2002 Act, I have considered the local authority's care plan of adoption. I am quite satisfied that the local authority's plan is the plan that will best meet the children's welfare; not only throughout their childhood but providing for them to be part of a family which can look out for them throughout their lives. It is, in my judgment the only realistic plan. I therefore make the care orders sought in respect of each of the children, approving the care plan of adoption and for the children to have indirect contact with their birth families.
40. It is necessary in these circumstances to deal with the placement applications. I gave directions for the placement applications to be before the court today for determination in the event that final care orders were made, approving the plan of adoption. I have now received the report of the children's guardian, Nicola Murphy,

in respect of the placement applications. Once again, the 2002 welfare considerations apply - the court can only make a placement order if it will meet the welfare interests of the children throughout their lives. The welfare checklist at section 1(4) must be applied by the court.

41. Neither M nor F (who share parental responsibility for the twins) gives their consent to the placement applications. In these circumstances, the court can only make placement orders in respect of the boys if the parents' consent is dispensed with under section 52 Adoption and Children Act 2002, on the basis that the children's welfare requires it.
42. In the judgment that I have given, I have set out a brief analysis of the circumstances which have given rise to the proceedings and which have led to my conclusion that the local authority's care plan of adoption for the boys best meets their welfare interests.
43. It is in the best interests of these boys that the plans are progressed without any delay. The making of placement orders will allow the local authority to progress the plans and search for prospective adopters for the children without any encumbrance. I have identified particular considerations in respect of each of the boys which may have a bearing on their future care needs. It is nonetheless considered both realistic and achievable that they will be placed for adoption within a short space of time.
44. I do not propose to repeat the matters I set out in the judgment I have given in the care proceedings. I incorporate the reasons and conclusions given earlier for the purposes of these applications. It is, in my judgment, essential that the boys have a future placement which can provide for them throughout their lives. It is, in my judgment, in their welfare interests that placement orders are made. Having reached that conclusion, in circumstances in which their parents (quite understandably) find themselves unable to consent to those applications, I have reached the clear conclusion - having taken full account, once again, of the Article 8 considerations - that placement orders are the only orders which meet the children's needs. Their welfare, therefore, requires their parents' consent to be dispensed with.
45. I therefore dispense with the consent of both M and F to the placement applications. In the case of both A and B, I make a placement order. Other than that, I will make a direction for legal aid assessment as required.

*End of judgment*

**We hereby certify that this judgment has been approved by Her Honour Judge Hudson.**

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